



Davis Graham & Stubbs LLP

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**Via E-Mail and First Class Mail**

Matt Cohn, Supervisory Attorney  
Amelia Piggott, Enforcement Attorney  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

Re: St. Louis Tunnel and Ponds Site, Rico, Colorado  
Draft Administrative Settlement and Order on Consent

Dear Ms. Piggott and Mr. Cohn:

This letter summarizes Atlantic Richfield's comments on the draft Administrative Settlement and Order on Consent for Removal Action ("AOC") received from EPA on October 6, 2010. Comments are organized below generally in the order they appear in the AOC. Please note that our intent here is simply to frame the dialogue for our upcoming meeting with EPA in mid-December (either December 14, 15, or 16 depending on EPA availability), not to identify specific changes to AOC language or detract from the substantial progress that Atlantic Richfield and EPA have made in defining an appropriate scope for the associated Work Plan. As previously agreed, we will be submitting the draft Work Plan on or before January 14, 2011. We hope to work with EPA to reach agreement on the AOC's final terms over the coming weeks in concert with the preparation and submittal of the Work Plan.

Site Name. The AOC's caption and text refer to the "Rico-Argentine Site." Atlantic Richfield believes the site name should be revised to "St. Louis Ponds Site" to be consistent with the terminology used in the discharge permit application package submitted to the Colorado Water Quality Control Division in August 2010, and also to distinguish this removal action from prior EPA administrative action in the area. The permit application included a "Site Features Map" (Figure 3-1) depicting the St. Louis Tunnel, Tunnel portal, ponds, and pond discharge point. This same figure could be used as the site map for the AOC and attached as Appendix 2. Referring to the same site name in the AOC as in the permit application comports with Atlantic Richfield's stated goal of ensuring that the work performed under the AOC dovetails with the long-term operation of the St. Louis Ponds treatment system under a Colorado Discharge Permit System ("CDPS") permit.

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**Findings of Fact.** Atlantic Richfield will propose revisions to some of the factual statements in Section IV. For example, references in Paragraph 9 to other mines in the area seem unnecessary. Atlantic Richfield disagrees with the statement in Paragraph 11 that the pond system lies within the 100-year floodplain, and with the statements in Paragraph 13 that zinc concentrations in the discharge to the Dolores River are increasing, that the settling ponds have a diminishing ability to reduce the concentrations of hazardous substances being released to the Dolores River, and that zinc concentrations in the pond system discharge exceed the assimilative capacity of the Dolores River. Atlantic Richfield will subsequently provide more detailed information as to why these statements are not supported by the facts. We would also like to clarify that the statement in Paragraph 15 – that Atlantic Richfield is a successor in interest to The Anaconda Company – is true only for the purposes of this AOC. Finally, we believe additional facts should be added to acknowledge the work that Atlantic Richfield has performed with Division input to complete the Water Quality Assessment and submit the discharge permit application, and more recently to complete improvements to some of the pond system embankments. We recognize that, under Paragraph 4, Atlantic Richfield reserves its right to contest the validity of the AOC's Findings of Fact and Conclusions of Law. We nevertheless believe certain changes to the Findings of Fact are justified for the reasons stated here.

**Deadlines and Reporting.** In several instances, reporting, payment, and notice deadlines should be extended. While we recognize EPA's need to ensure progress under a variety of scenarios, some of the proposed deadlines are impracticable for this project. Examples include: the time to retain a new contractor in Paragraph 18 (currently 7 days from disapproval of current contractor); the time to submit a Health and Safety Plan in Paragraph 24 (currently 30 days from the Effective Date); the time to obtain necessary access agreements under Paragraph 31 (currently 14 days from the Effective Date); the time to make payments of Future Response Costs under Paragraph 44 (currently 30 days from receipt of a bill); the time for oral and written notice of a force majeure under Paragraph 51 (currently 24 hours and 2 days from suspicion of delay); and the time to establish financial assurance under Paragraph 82 (currently 30 days from the Effective Date). Also, the requirement in Paragraph 27 for submission of bi-weekly written progress reports seems unnecessarily burdensome. Given the nature, extent, and pace of the work to be performed, periodic update calls during the work season with written quarterly progress reports should be sufficient.

**Access.** Atlantic Richfield has been working for some time to obtain access to portions of the St. Louis Ponds Site from various private landowners. We would like to discuss what additional assistance EPA can provide in securing access to all areas necessary for completing the work required under the AOC.

**Modifications and Scope of the Removal Action.** Provisions in Paragraphs 23.b and 85 authorizing EPA to modify the Work Plan and other submitted plans and schedules conflict with